

REFERENCE TITLE: takings; public use; jury determination

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HCR 2003

Introduced by
Representatives Gray C, Burges, Pearce

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE II,
SECTION 17, CONSTITUTION OF ARIZONA; RELATING TO EMINENT DOMAIN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona, the
2 Senate concurring:

3 1. Article II, section 17, Constitution of Arizona, is proposed to be
4 amended as follows if approved by the voters and on proclamation of the
5 Governor:

6 17. Eminent domain; just compensation for private
7 property taken; public use determinations

8 Section 17. A. Private property shall not be taken for
9 private use, except for private ways of necessity, and for
10 drains, flumes, ~~or~~ or ditches, on or across the lands of others
11 for mining, agricultural, domestic, ~~or~~ or sanitary purposes.

12 B. No private property shall be taken or damaged for
13 public or private use without just compensation having first
14 been made, paid into court for the owner, secured by bond as may
15 be fixed by the court, or paid into the state treasury for the
16 owner on such terms and conditions as the legislature may
17 provide, and no right of way shall be appropriated to the use of
18 any corporation other than municipal, until full compensation
19 therefore be first made in money, or ascertained and paid into
20 court for the owner, irrespective of any benefit from any
21 improvement proposed by such corporation, which compensation
22 shall be ascertained by a jury, unless a jury be waived as in
23 other civil cases in courts of record, in the manner prescribed
24 by law. Whenever an attempt is made to take private property
25 for a use alleged to be public, the question whether the
26 contemplated use be really public shall be a judicial question,
27 and determined as such without regard to any legislative
28 assertion that the use is public, EXCEPT THAT ON REQUEST OF A
29 PRIVATE PROPERTY OWNER, A JURY SHALL DETERMINE WHETHER A TAKING
30 IS FOR A PUBLIC USE.

31 C. NOTWITHSTANDING SUBSECTION B, IF A JUDGE DETERMINES
32 THAT THE TAKING OF PRIVATE PROPERTY IS FOR A PUBLIC USE, THE
33 PRIVATE PROPERTY OWNER MAY APPEAL THE RULING OR OTHERWISE
34 REQUEST THAT A JURY DETERMINE WHETHER THE CONTEMPLATED USE IS
35 REALLY PUBLIC.

36 2. The Secretary of State shall submit this proposition to the voters
37 at the next general election as provided by article XXI, Constitution of
38 Arizona.